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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 1306

HUMBLE OIL & REFINING COMPANY, PETITIONER

v.

EIGHTH REGIONAL WAR LABOR BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court of the United States for the Northern District of Texas (R. 361-375) is reported in 56 F. Supp. 950. The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 380-384) is reported in 145 F. 2d 462.

JURISDICTION

The order of the District Court was entered on September 21, 1944 (R. 350-359). The judgment of the Circuit Court of Appeals was entered on December 21, 1944 (R. 384). The order of the

Circuit Court of Appeals denying petitioner's application for rehearing (R. 385-391) was entered on March 1, 1945 (R. 392). The petition for a writ of certiorari was filed on May 23, 1945. The jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The principal questions presented are:

1. Whether the District Court of the United States for the Northern District of Texas had jurisdiction over the defendants who were not resident in Texas and who were not served with process there.
2. Whether these defendants were indispensable parties in whose absence the action could not be maintained.
3. Whether, in any event, a "directive order" of the National War Labor Board, issued subsequent to the War Labor Disputes Act and Executive Order 9370, may, in the circumstances of this case, be enjoined or declared invalid in this proceeding.

STATUTE AND REGULATIONS INVOLVED

The relevant portions of the statute and regulations involved, are set forth in the Appendix, pp. 15-17.

STATEMENT

On September 7, 1944, petitioner filed a complaint (R. 5-114) in the District Court of the

United States for the Northern District of Texas, seeking (1) to enjoin respondents from seizing or taking possession of petitioner's plant at Ingleside, Texas, and from enforcing or compelling compliance by petitioner with a "directive order" of the National War Labor Board issued on April 1, 1944, and (2) a declaratory judgment that such order was illegal and void and that respondents have no authority to enforce or compel compliance therewith (R. 59-61). The complaint named as defendants the Eighth Regional War Labor Board and, in their individual and official capacities, its members;¹ the National War Labor Board and, in their individual and official capacities, its members; the Director of Economic Stabilization; and the Petroleum Administration for War and, in their individual and official capacities, its Administrator, Deputy Administrator, and Manpower Counsellor (R. 3-9).

The material allegations of the complaint may be summarized as follows: Petitioner is engaged in producing and refining crude oil and its products (R. 9). It operates three refineries in the State of Texas, one of which is at Ingleside (R. 9-10). On May 14, 1943, petitioner entered into a collective bargaining agreement with the Oil

¹ For purposes of convenience and brevity these respondents, when referred to collectively *infra*, will be designated the "Texas respondents"; the other respondents, when referred to collectively, will be designated the "Washington respondents."

Workers' International Union, Local 316, which had been certified by the National Labor Relations Board as the exclusive bargaining representative of certain of petitioner's employees at its Ingleside plant (R. 10-11). The contract did not contain a "maintenance of membership" clause but the Union expressly reserved the right "to petition the War Labor Board for a directive covering" such a provision, without prejudice to the right of petitioner to resist the issuance or application of such a directive (R. 11-12). The Union thereafter referred the maintenance-of-membership question to the Conciliation Service of the United States Department of Labor, which referred it to the Secretary of Labor, who, in turn, referred it to the National War Labor Board (R. 13). A hearing was held on July 12, 1943, before a panel appointed by the Board to hear the dispute (R. 13). The panel recommended denial of the Union's request (R. 16, 176-183), and the Eighth Regional Board adopted the panel's recommendation (R. 16, 191-193). Upon the Union's petition for review, the National War Labor Board, on April 1, 1944, reversed the Regional Board's action and issued a directive order to the effect that the terms and conditions of employment at the Ingleside refinery be governed by a maintenance-of-membership provision (R. 16-17, 63-66). Petitioner has refused to comply with that directive order (R. 30).

The complaint charged that the National Board issued its order without affording petitioner a hearing (R. 17); that the order is illegal and void (R. 22); but that, nevertheless, action has been or is about to be taken towards its enforcement (R. 30-42). It was further alleged that the Eighth Regional Board refused, because of petitioner's noncompliance with the National Board's order, to consider or grant so-called Form 10 applications filed by petitioner for approval of voluntary wage increases for employees at refineries other than that at Ingleside (R. 31-36); that the National Board has reported petitioner's noncompliance to the Director of Economic Stabilization (R. 49); that he, in turn, has reported its noncompliance to the Petroleum Administration for War, its Administrator, Deputy Administrator, and Manpower Counsellor (R. 49); and that the said Deputy Administrator and Manpower Counsellor have threatened to take possession of the Ingleside plant unless petitioner complied with the National Board's order (R. 51-53). The complaint contained general allegations to the effect that a conspiracy exists among the respondents and other officers and agencies of the United States "whose names and identities are unknown" to coerce petitioner to comply with that order by the imposition of sanctions and penalties including the seizure of its Ingleside plant (R. 39-41, 49-54).

On the basis of the verified complaint, the district court, on September 7, 1944, issued an *ex parte* restraining order against the Petroleum Administration for War and its Administrator, Deputy Administrator, and Manpower Counsellor, and ordered all the respondents to show cause why a temporary injunction should not issue (R. 114-116).

The Washington respondents appeared specially and moved for dismissal as to them on the ground that the court lacked jurisdiction over them (R. 118-119) and, without waiving that motion, they and the Texas respondents moved to dismiss the complaint or, in the alternative, for summary judgment, on the grounds that the court had no jurisdiction over the subject matter of the action and that the complaint failed to state a claim upon which relief could be granted (R. 119-121). In support of the motions and in opposition to the application for a preliminary injunction, respondents filed affidavits of respondents Wales T. Madden, chairman of the Eighth Regional Board (R. 144-147), Lloyd K. Garrison, a public member of the National Board (R. 122-125), Fred M. Vinson, Director of Economic Stabilization (R. 126-127), Ralph K. Davies, Deputy Administrator of the Petroleum Administration for War (R. 128-140), and George E. Dewey, Manpower Counsellor of that agency (R. 141-143). In support of its request for a preliminary injunction, petitioner filed 33 affidavits, all of which, except one, were ex-

ected by various of its directors, officers, or employees (R. 147-349).

From the affidavits it appeared that none of the Washington respondents is an inhabitant or resident of the State of Texas and none was served with process in that State (R. 122-123, 126, 128, 141); that neither the National nor the Regional Board has power to enforce the directive order of the National Board or to seize any of petitioner's property (R. 123, 145); that the Director of Economic Stabilization has no power to seize any of petitioner's property (R. 127); that the Regional Board does not have the power to refer the matter of petitioner's noncompliance either to the President, the Director of Economic Stabilization, or the Petroleum Administrator for War (R. 145); and that the matter of petitioner's noncompliance had not been reported to the President, the Director of Economic Stabilization, or the Petroleum Administrator for War (R. 123, 126-127, 145). Respondents' affidavits also stated that neither the National War Labor Board, the Director of Economic Stabilization, the Petroleum Administration for War, any of its officers or its employees, nor the Eighth Regional Board or its members, had at that time² either threatened to take or taken action to enforce the

² On June 5, 1945, the President issued Executive Order No. 9564, authorizing and directing the Petroleum Administrator to take possession of the petitioner's Ingleside plant and to operate it or arrange for its operation in such manner

National Board's order of April 1, 1944, or to seize any of petitioner's property (R. 123, 127-129, 144-145).

The affidavits further show that at the time the complaint herein was filed petitioner had pending before the Regional Board a number of Form 10 applications requesting approval of wage adjustments proposed to be made at plants other than that at Ingleside (R. 261-262, 267-271); that the Regional Board was refusing to process these applications because of petitioner's noncompliance with the National Board's order of April 1, 1944 (R. 256-257, 262-263, 265-266, 273-274); and that such refusal having been brought to the attention of the National Board, it immediately directed the Regional Board to consider and dispose of petitioner's Form 10 applications in accordance with established policies and without reference to petitioner's noncompliance (R. 124-125, 145-147, 246).

The district court denied respondents' motions for summary judgment (R. 353), overruled the

as may be necessary for the successful prosecution of the war. In accordance with the Presidential Order, possession was taken by the Petroleum Administrator on June 6, 1945. On the same day, on the petitioner's application, an order was issued *ex parte* by the United States District Court for the Southern District of Texas, Corpus Christi Division, restraining Gordon T. Granger, the representative of the Petroleum Administration who had been designated to carry out the terms of the executive order, from seizing the plant, ejecting the petitioner therefrom, or interfering with its possession thereof.

Texas respondents' motions to dismiss (R. 353), deferred ruling on the Washington respondents' motions to dismiss (R. 354), and issued a preliminary injunction against the Texas respondents (R. 354-356) and against the Washington respondents "to whatever extent this court may have jurisdiction over the persons of said defendants" (R. 356), enjoining them and their attorneys, agents, representatives, and principals from seizing or interfering with petitioner's possession or control of its Ingleside plant for the purpose of enforcing or attempting to enforce the challenged order of the National Board and from taking any other action of any kind, by way of seizure, penalty, sanction, or otherwise, to compel petitioner to comply with the order (R. 355-358). On appeal to the Circuit Court of Appeals (R. 375-376), the order of the district court was reversed and the injunction dissolved (R. 384) on the grounds that the district court lacked jurisdiction to enjoin the Washington respondents and that no sufficient basis existed for the issuance of the injunction against the Texas respondents (R. 383-384).

ARGUMENT

The decision below is clearly correct, in each of its aspects, and further review is not warranted. Except for the fact that, as the court below held, the district court lacked jurisdiction over the Washington defendants and these defendants were indispensable parties in whose absence the action could not be maintained, the

petition for certiorari presents only questions which this Court has declined to review on three previous occasions during the present Term. *Employers Group, etc. v. National War Labor Board*, 143 F. 2d 145 (App. D. C.), certiorari denied, 323 U. S. 735; *National War Labor Board v. Montgomery Ward & Co.*, 144 F. 2d 528 (App. D. C.), certiorari denied, 323 U. S. 774; *National War Labor Board v. United States Gypsum Co.*, 145 F. 2d 97 (App. D. C.), certiorari denied March 12, 1945, No. 857, this Term. In each of these cases the National War Labor Board and its members and the Director of Economic Stabilization were properly before the United States District Court for the District of Columbia and were subject to its jurisdiction; the petitioners in those cases were not embarrassed, as is the petitioner here, by the additional difficulties arising from the fact that this suit was brought in a district in which none of the Washington defendants resides, either officially or personally, and that no personal service was obtained there.

1. Since none of the Washington respondents was individually or officially an inhabitant or resident of the State of Texas and none was served with process there (R. 122-123, 126, 128, 141), the district court was without jurisdiction over them and, accordingly, did not have the power to issue any *in personam* order or decree, interlocutory or final, against any of them. Rule 4 (f), F. R. C. P.; *Robertson v. Railroad Labor Board*, 268 U. S. 619; *Munter v. Weil Co.*, 261 U. S. 276; *Putnam*

v. *Ickes*, 78 F. 2d 223 (App. D. C.), certiorari denied, 296 U. S. 612; *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229. This rule has found frequent application in suits against Federal agencies and officers. *Butterworth v. Hill*, 114 U. S. 128; *Hill v. Wallace*, 259 U. S. 44, 72; *Bradley Lumber Co. v. National Labor Relations Board*, 84 F. 2d 97, 99 (C. C. A. 5), certiorari denied, 299 U. S. 559; *Transcontinental & Western Air, Inc. v. Farley*, 71 F. 2d 288 (C. C. A. 2), certiorari denied, 293 U. S. 603.³ The allegations of conspiracy in the complaint could not enlarge the jurisdiction of the district court. *Hitchman Coal and Coke Co. v. Mitchell*, *supra*.⁴

2. The district court, having failed to obtain jurisdiction over the Washington respondents,

³ Even if the Washington respondents could be and had been personally served with process in the State of Texas, this action could not, for want of venue, be maintained against them. Their official residence is the District of Columbia, and that residence controls for purposes of venue in suits, such as this one, brought against them for acts growing out of performance of their official duties. *Butterworth v. Hill*, *supra*; *Bradley Lumber Co. v. National Labor Relations Board*, *supra*; *Smith v. Farley*, 38 F. Supp. 1012 (S. D. N. Y.).

⁴ The cases cited by petitioner (Pet. 16, 23-31) to the contrary are not in point. Two of those cases, where injunctions were sought against the Secretary of War, were concerned with the question of whether the suits were against the United States. *Philadelphia Co. v. Stimson*, 223 U. S. 605; *Goltra v. Weeks*, 271 U. S. 536. The other cases mainly involved suits against subordinate officials where they, as distinguished from the Texas respondents here, were the principal or primary actors themselves, in the sense that they were either doing the very acts complained of or had the actual power to do them.

should properly have dismissed the action. The gist of the petitioner's complaint is that the Washington respondents were taking or had threatened to take steps to enforce the order of the National Board. In effect, petitioner sought to have declared invalid that order and Executive Order No. 9370 and to have the enforcement of the former and the application of the latter enjoined. In such an action the Washington respondents were indispensable parties without whom the case could not proceed. It seems clear that the National Board, its members, and the Director of Economic Stabilization have an interest in this suit "of such a nature that a final decree cannot be made without * * * affecting that interest * * *." *Minnesota v. Northern Securities Co.*, 184 U. S. 199, 236; *Warner Valley Stock Co. v. Smith*, 165 U. S. 28; *Guerich v. Rutter*, 265 U. S. 388; *Webster v. Fall*, 266 U. S. 507; *Neher v. Harwood*, 128 F. 2d 846 (C. C. A. 9), certiorari denied, 317 U. S. 659; *Janes v. Lake Wales Citrus Growers Ass'n.*, 110 F. 2d 653 (C. C. A. 5); *National Conference on Legalizing Lotteries, Inc. v. Goldman*, 85 F. 2d 66 (C. C. A. 2).

The only specific complaint petitioner made as to the Texas respondents was that they, as a means of compelling petitioner's compliance with the National Board's order, had refused to consider or grant petitioner's pending Form 10 applications (R. 30-39). But prior to the issuance of the injunction herein the Regional Board, at the direc-

tion of the National Board, had proceeded to consider and dispose of those applications, without reference to petitioner's noncompliance with the National Board's order (R. 124-125, 145-147, 246). As stated by the court below (R. 383), "there was no likelihood of a recurrence" of their refusal to process the applications, "and any doubt on the subject should have been resolved in favor of the regularity of official conduct." *United States v. Chemical Foundation*, 272 U. S. 1, 14-15; cf. *Waite v. Macy*, 246 U. S. 606. In these circumstances no useful purpose would be served by ordering the processing of the Form 10 applications. *United States v. Alaska S. S. Co.*, 253 U. S. 113; *Boggus Motor Co. v. Onderdonk*, 9 F. Supp. 950 (S. D. Tex.); *Securities and Exchange v. Torr*, 87 F. 2d 446 (C. C. A. 2); *Nelson v. Simon Hardware Company*, 145 F. 2d 386 (App. D. C.); cf. *Yarnell v. Hillsborough Packing Co.*, 70 F. 2d 435 (C. C. A. 5). The court below correctly held, therefore, that petitioner "had no real controversy with the Texas [respondents] at the time the injunction was issued" (R. 383).

3. In any event, Congress has not provided for judicial enforcement or review of orders of the National War Labor Board. It is now settled that such orders in themselves neither alter the legal rights of the parties nor impose legal sanctions of any kind, and are not reviewable in the federal courts. *Employers Group, etc. v. National War Labor Board*, *supra*; *National War Labor Board*

v. Montgomery Ward & Co., supra; National War Labor Board v. United States Gypsum Co., supra.

The petitioner seeks relief in this proceeding only against the Board's order, which "does not of itself adversely affect complainant" (cf. *Rochester Tel. Corp. v. United States*, 307 U. S. 125, 130) and contains none of the incidents requisite for judicial review in the federal courts. *Employers Group, etc. v. National War Labor Board*, 143 F. 2d 145 (App. D. C.); *Baltimore Transit Co. v. Flynn*, 50 F. Supp. 382 (D. Md.); cf. *Pennsylvania R. R. Company v. Labor Board*, 261 U. S. 72; *Pennsylvania Federation v. Pennsylvania R. R. Company*, 267 U. S. 203; *Switchmen's Union v. Mediation Board*, 320 U. S. 297; *United States v. Los Angeles & S. L. R. Co.*, 273 U. S. 299. Cf. *Watson v. Buck*, 313 U. S. 387, 399-400; *Champlin Rfg. Co. v. Commission*, 286 U. S. 210, 237-238; *Spielman Motor Sales Co. v. Dodge*, 295 U. S. 89.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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JUNE 1945.

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